

16202-02195

BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

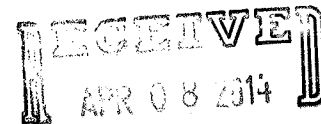
NATHANIEL BRANDON,

Claimant,

v.

STATE OF DELAWARE,

Employer.



BY:

Hearing No. 1372970

ORDER

~~This matter came before the Board on March 27, 2014, on a motion by Nathaniel Brandon ("Claimant") seeking an order compelling the State of Delaware ("Employer") to resume payment of Claimant's OxyContin and Oxycodone prescriptions.~~

Claimant injured his low back in a compensable work accident on July 26, 2011. He has had two surgeries on the back and has been receiving pain medication, specifically OxyContin and Oxycodone. Claimant's total disability status was terminated in February of 2014 and he began to receive partial disability benefits. In early March, the insurance carrier did not approve the payment of Claimant's medications. The bills were not sent to Utilization Review ("UR"). Claimant's doctor offered an opinion that the sudden unilateral cessation of Claimant's medications would cause serious medical problems.

When questioned, Employer responded that payment of the medications was denied on the basis that the medications were not reasonable, necessary or causally related to the work accident. Because causation was challenged, the UR process was not appropriate for the bills. The basis for Employer's position is that, in February of 2014, Claimant was arrested and charged with illegally selling Oxycodone. Claimant has since been assigned to rehabilitation through the Drug Court Diversion Program.

Claimant argues that Employer has no legal basis to stop paying for medical treatment. However, an employer can refuse to pay for medical treatment that it, in good faith, believes is not reasonable, necessary or causally related to the work accident. In this case, Employer learned that Claimant was charged with selling Oxycodone, the very medication that Employer was providing to Claimant. It is certainly reasonable for Employer to suspect that, if he is selling it, Claimant no longer needs the medication to treat his work injury.¹ Thus, the Board perceives no illegal conduct by Employer in denying payment of the medications.

UR is available for an employer to challenge the reasonableness and necessity of medical treatment, but UR is not available if causation is not admitted. Claimant questions how Employer can challenge causation for medication that Claimant has long been receiving for his work injury. However, this situation falls into something of a gray area in the terminology used. If (as Employer believes) Claimant no longer needs the medication, then it certain could be argued that the ongoing receipt of such medication is not “reasonable” or “necessary” for the work injury and, thus, the dispute could be sent to UR. On the other hand, it could also be said that, if the medication is no longer needed to treat the work injury, then the work injury is no longer “causing” the need for Claimant’s medication. From that perspective, “causation” is in dispute. Thus, while Employer theoretically could have simply submitted the prescription bills to UR and followed the UR process to challenge them, the Board cannot say that it was improper for Employer to characterize it as a challenge to “causation.”

Therefore, the Board finds that Claimant’s recourse in this situation is to file a Petition to Determine Additional Compensation Due seeking payment of his medications. Claimant’s motion seeking to compel payment of his medications is denied.

¹ Claimant was receiving both OxyContin and Oxycodone from Employer. After a telephone conference between the attorneys for the parties and Claimant’s doctor, Employer agreed to resume payment of Claimant’s OxyContin prescription “without prejudice” to its position. Employer continues to deny payment of Oxycodone for Claimant.

IT IS SO ORDERED this 4th day of April, 2014.

INDUSTRIAL ACCIDENT BOARD

For Lowell L. Groundland / OWC Staff
LOWELL L. GROUNDLAND

Alice M. Mitchell
ALICE M. MITCHELL

Mailed Date: 4-4-14

Karen Miller
OWC Staff

Edward B. Carter, Esquire, for Claimant
Jessica L. Julian, Esquire, for Employer

